

**CITY OF DURHAM NORTH CAROLINA**

**REQUEST FOR PROPOSALS**

**MANAGEMENT OF THE DURHAM AREA TRANSIT AUTHORITY**

**FIXED ROUTE TRANSIT SERVICE**

ISSUED NOVEMBER 27, 2006

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## **1.0 INTRODUCTORY INFORMATION**

The City of Durham, North Carolina is issuing this Request for Proposals (RFP) to select a firm to manage the Durham Area Transit Authority (DATA) fixed route transit service in the service areas of the City of Durham and Durham County. The DATA fixed route transit service currently includes 19 routes. Although DATA's authorized service area extends up to 30 miles beyond the city limits of the City of Durham, most of the 19 fixed routes provide service within the city limits. Indeed, 80 percent of the land area of the City of Durham is within one-half mile of a transit stop. The DATA fixed route service is provided using 38 peak hour vehicles. Fixed route service is provided seven days per week generally from 5:30 a.m. until 12:30 a.m., Monday through Saturday, and from 6:30 a.m. until 7:30 p.m. on Sunday and holidays. The system is characterized as a "pulse" system, with 30-minute headways on most routes designed to facilitate connections between routes and reduce passenger-waiting time. On an annual basis, approximately 168,000 hours of revenue service are provided with revenue miles approximating 2,300,000. Ridership approximates 4,500,000 annually.

The DATA fixed route transit service is currently provided with a revenue vehicle fleet totaling 49 active vehicles as more fully described in Exhibit 1. The seven (7) oldest vehicles are scheduled to be replaced with six (6) new vehicles within the next 18 months, bringing to total active fleet to 48. And the City of Durham intends to purchase five (5) additional vehicles as soon as funding becomes available, which will bring the total active fleet to 53.

From the time the City of Durham entered the transit business in 1991, when it assumed responsibility for the transit system previously operated by Duke Power Company, until July 1, 2001, the DATA fixed route service was provided through a transit management contract. Through the transit management contract, the contractor collected a management fee from the City of Durham for managing the DATA fixed route system, and all operating costs of the fixed route system were paid by the City of Durham through the contractor. In July 2001 the City of Durham restructured the contractual arrangement underlying the provision of the fixed route transit service and selected a contractor to manage and operate the service on the basis of a rate per revenue hour of service. Effective July 1, 2007, the City of Durham intends to return to a transit management contractual arrangement, as described below and in more detail elsewhere within this RFP.

The successful firm will be required to first establish a private non-profit public service subsidiary corporation unique to Durham North Carolina. The successful firm, with the approval of the City of Durham, will then select and install as employees of this subsidiary corporation a General Manager, Assistant General Manager, Director of Operations, and a Director of Maintenance. Thereafter, the successful firm will maintain the subsidiary corporation in good standing and provide any and all necessary support to fully staff and maintain as fully functional the subsidiary corporation, which, by assignment, shall be responsible for managing and carrying out the day to day operations of the DATA fixed route service.

The City of Durham will pay the successful firm a management fee, and it will establish a working cash fund for use by the subsidiary corporation. All expenses associated with the DATA fixed route transit service will be borne by the subsidiary corporation and will be reimbursed by the City of Durham upon submission of the appropriate monthly financial statements by virtue of the City of Durham reestablishing the working cash fund to its original amount.

## **2.0 SCHEDULE AND PROCESS**

### **2.1 General Schedule**

The schedule for selecting a firm to manage the Durham Area Transit Authority (DATA) fixed route transit service is as shown below. The City of Durham reserves the right to alter the dates shown by written notice.

RFP advertised and issued:	11/27/06
Pre-proposal conference:	12/13/06
Deadline for receipt of written questions and requests for addenda:	12/20/06
Issuance of City of Durham responses and/or addenda:	12/29/06
Proposals due to City of Durham:	01/19/07
Selection of proposers in competitive range:	01/26/07
Discussions with proposers in competitive range:	02/01/07 and 02/02/07
Best and final offers due:	02/09/07
Negotiation of final contract documents:	02/16/07
Selection of contractor by Durham City Council and notice to proceed:	03/19/07
Start of service:	07/01/07

### **2.2 Preproposal Conference**

The City of Durham will conduct a preproposal conference at the DATA Facility, 1907 Fay Street, Durham, North Carolina, at 1:00 p.m. on the date set forth in section 2.1 above. The purpose of the conference is to clarify any ambiguity in this RFP, and to answer any questions proposers may have regarding any aspect of this RFP. A tour of the facilities will be available on the day of the preproposal conference. While potential proposers are strongly encouraged to attend the preproposal conference, attendance is not mandatory.

### **2.3 Clarification Requests and Responses**

A proposer may submit to the City of Durham a request for interpretation of or clarification to this RFP or any addendum thereto. Requests for clarification or modification of this RFP must be submitted in writing. Any such request must be received by the Transit Administrator, City of Durham/Durham Area Transit Authority, 1907 Fay Street, Durham, North Carolina, 27703, in writing, by 2:00 local time on the date specified in section 2.1 above, and must be accompanied by all relevant information supporting the request. Requests received after that date will not be considered timely.

The Transit Administrator will make a response or determination of each request made by a proposer pursuant to this procedure. The written response or determination will be mailed or otherwise furnished to all prospective proposers by the date specified in section 2.1 above.

## 2.4 Addenda and Addenda Acknowledgement

If it becomes necessary to amend, clarify, or revise any part of this RFP, the City of Durham will provide a written addendum to all proposers setting forth that change. The City of Durham is not bound by any oral interpretations, oral clarifications, or oral changes made in the written specifications by the City of Durham's employees.

Proposers shall acknowledge receipt of addenda as instructed in section 3.1 below. Where such addenda require substantial changes in the services to be provided or the proposed management fee for those services, the City of Durham may, at its discretion, postpone the final date set for proposal receipt by such number of days as the City of Durham believes are necessary to enable prospective proposers to revise proposals.

## 2.5 Submittal of Proposals

Proposals must be sealed and submitted to the address denoted in section 2.3 above. On the outside of the sealed package must be the name of the proposer and the wording "DATA Fixed Route Management Proposal - Number 2007." Proposals must include one (1) original and seven (7) copies.

Within the sealed package, there must also be one (1) original start up and management fee proposal signed by an authorized representative of the proposer and sealed within its own envelope. On the outside of this envelope, there must be the wording "DATA Fixed Route Management Proposal – Number 2007 – Start Up and Proposed Management Fee."

Proposals must be received no later than 2:00 p.m. local time on the date specified in section 2.1 above. Proposals received after the specified date and time shall be considered late and shall not be considered for award. Late proposals shall be returned to the sender unopened.

Proposals shall provide a straightforward, concise delineation of the proposer's capability to satisfy the requirements of this RFP. Each proposal shall be submitted in the requested format providing all pertinent information specified in this RFP, and signed in ink by a duly authorized officer of the company.

Proposers understand and agree that the submission of a proposal will constitute acknowledgement and acceptance of, and a willingness to comply with, all the terms, conditions, and criteria set forth in this RFP, except as otherwise specifically indicated in the proposal. Any and all parts of a submitted proposal, as it may become revised, will become part of a subsequent contract between the successful proposer and the City of Durham.

Responses to this RFP shall be made in accordance with the specifications, required submittals, and instructions set forth in this RFP. Failure to adhere to these requirements or the submission of false, incomplete, or unresponsive statements in connection with a

proposal may be sufficient cause for rejection of the proposal. The evaluation and determination of the satisfaction of these requirements shall be the sole responsibility of the City of Durham and its judgment shall be final.

## 2.6 Single Proposal Response

If only one proposal is received in response to this RFP, information will be requested from the proposer to enable the City of Durham to determine if the management fee proposed is fair and reasonable.

## 2.7 Proposal Withdrawal

Prior to the date and time set in sections 2.1 and 2.5 above as the proposal receipt deadline, proposals may be modified or withdrawn by the proposer's authorized representative in person, or by written notice including a facsimile. If proposals are modified or withdrawn in person, the authorized representative shall make his or her identity known to the Transit Administrator and shall sign a receipt for the proposal. Written notices must be received by the Transit Administrator at the address specified in section 2.3 above, or at 919-560-1534 if sent by facsimile. After the proposal receipt deadline, proposals may not be withdrawn for one hundred fifty (150) calendar days.

## 2.8 Cost of Proposal

Any costs incurred by proposers responding to this RFP in anticipation of receiving a contract award will not be reimbursed by the City of Durham.

## 2.9 Anti-Lobbying Clause

No person (or entity) submitting a proposal in response to this RFP, nor any officer, employee, representative, agent, or consultant representing such a person (or entity) shall contact through any means or engage in any discussion concerning the award of this contract with any Council Member of the Durham City Council or any Member of the DATA Board of Trustees or their personal staff during the period beginning on the date of proposal submissions and ending on the date of selection of the Contractor. Any such contact would be grounds for the disqualification of the proposer. Contact with the City of Durham staff, including DATA staff, during such time period shall be through the Transit Administrator and shall be limited to site visits and investigations, and discussions leading to BAFOs.

## 2.10 Rejection of Proposals

The City of Durham reserves the right to accept or reject any and all proposals submitted in response to this RFP, or refuse to enter into any contract resulting from any proposal submitted, without liability or expense to the City of Durham.



## 2.11 Cancellation of Request for Proposals

The City of Durham reserves the right in its discretion to cancel this RFP in whole or in part.

## 2.12 Discussions with Proposers in the Competitive Range

Proposers must be prepared to be present in Durham, North Carolina on either of the two dates specified in section 2.1 above for the purpose of participating in these discussions.

## 2.13 Negotiation of Final Contract Documents

Proposers must be prepared to be present in Durham, North Carolina at some point throughout the workweek ending February 16, 2007 for the purpose of negotiating the final contract documents. Any contract resulting from this solicitation shall contain the terms and conditions included in this RFP, any addenda to this RFP, and the successful proposal.

## 2.14 Acceptance of Proposal

Each proposal shall be submitted with the understanding that it is subject to negotiation at the option of the City of Durham pursuant to the evaluation procedure set forth in section 3.0. Upon acceptance in writing by the City of Durham of the final offer to furnish any and all of the services described herein, the parties shall promptly execute the final contract documents. The Contract shall bind the proposer to furnish and deliver at the price proposed and in accordance with conditions of the accepted proposal and this RFP, as negotiated.

## 2.15 Proposal Protest Procedures

### 2.15.1 General

Proposal protests of an interested party regarding the procurement actions of the City of Durham will be considered and determined in accordance with the following procedures. A protest which is submitted by a party that is not an interested party or which is not in accordance with these procedures shall not be considered by the City of Durham, and will be returned to the submitting party without any further action by the City of Durham.

### 2.15.2 Definitions

For purposes of this Proposal Protest Procedures section:

The term “approval” means the action by the City of Durham of selecting a contractor.

The term “award” means the action of executing a Contract.

The term “Contract” means the document to be negotiated between the City of Durham and the successful proposer.

The term “days” refers to normal business days of the City of Durham staff offices.

The term “interested party” means any person (a) who is an actual or prospective proposer or offeror in the procurement involved, and (b) whose direct economic interest would be affected by the award of the Contract or by a failure to award the Contract.

The term “solicitation” means a Request for Proposals, or other form of document used to procure services.

#### 2.15.3 Grounds for Protests

Any interested party may file a proposal protest with the City of Durham on the grounds that: the City of Durham has failed to comply with applicable Federal or State law; the City of Durham has failed to comply with its procurement procedures; or the City of Durham has failed to comply with the terms of this RFP.

#### 2.15.4 Contents of Protest

A proposal protest must be filed in writing and must include:

The name and address of the protestor.

The name and number of the procurement solicitation.

A detailed statement of the grounds for the protest, including all relevant facts and the Federal or State law or the provision of the City of Durham procurement solicitation alleged to have been violated.

Any relevant supporting documentation the protesting party desires the City of Durham to consider in making its decision.

The desired relief, action, or ruling.

Protests must be submitted to the Durham City Manager at the address denoted below with a copy submitted to the City Transit Administrator at the address denoted in section 2.3 of this RFP.

City of Durham  
Office of the City Manager  
101 City Hall Plaza, 2<sup>nd</sup> Floor  
Durham, North Carolina 27701

All protests must be received at the City of Durham offices during normal office hours of 8:00 a.m. to 5:00 p.m. local time.

#### 2.15.5 Timing Requirements and Categories of Protests

The City of Durham will consider the following two types of protests by interested parties, in accordance with the timing requirements specified:

##### 2.15.5.1 Protests regarding solicitation documents.

Any proposal protest alleging improprieties in the solicitation process or in solicitation documents must be filed no later than 15 days prior to the deadline for submittal of proposals in order to be considered by the City of Durham. Any protest based on such grounds filed after that date will not be considered by the City of Durham. This category of protests includes, but is not limited to, allegations of restrictive or exclusionary specifications or conditions.

##### 2.15.5.2 Protests regarding proposal evaluation or Contract award.

Any proposal protest regarding the evaluation of proposals by the City of Durham or the approval or award of the Contract must be filed with the City of Durham no later than 10 days after the grounds for protest should have reasonably been known to the protestor, but in no event later than 5 days after the Contract has been approved by the Durham City Council. Any protest filed after such date that raises issues regarding the proposal evaluation or the Contract approval or award will not be considered by the City of Durham.

#### 2.15.6 Review by City of Durham

The City of Durham will notify the protestor upon timely receipt of a proposal protest and may, where appropriate, request additional information from the protestor within a time certain to be specified in the notice by the City of Durham. The City of Durham will also give notice to other bidders or offerors in the procurement involved and may permit any such party to submit information regarding the merits of the protest. The City of Durham may, in its discretion, hold a conference with the protestor to review the issues raised by the protest and may allow the protestor to submit a rebuttal regarding information submitted by another party.

##### 2.15.6.1 Protests regarding solicitation documents or process.

Upon receipt of a timely protest regarding the solicitation, the City of Durham will postpone the opening of the proposals until resolution of the protest. The filing of the protest will not, however, change the date on which proposals are due, unless the City Manager determines, and so notifies all proposers, that such a date change is

necessary and appropriate to carry out the goals of the procurement and assure fair treatment for all proposers.

#### 2.15.6.2 Protests regarding proposal evaluation or Contract award.

Upon receipt of a timely protest regarding evaluation of proposals or the approval or award of the Contract, the City of Durham will suspend Contract approval or other pending action, or issue a stop work order if appropriate, until the resolution of the protest. In this event, the successful proposer may not recover costs resulting from any delay through a change order.

#### 2.15.7 Ability to Proceed

Notwithstanding the pendency of a proposal protest, the City of Durham reserves the right to proceed with the appropriate step or action in the procurement process or in the implementation of the Contract in the following cases:

Where the item to be procured is urgently required;

Where the City of Durham determines that the protest is vexatious or frivolous;

Where delivery or performance will be unduly delayed, or other undue harm will occur, by failure to make the award promptly; or

Where the City of Durham determines that proceeding with the procurement is otherwise in the public interest.

#### 2.15.8 Summary Dismissal

The City of Durham also reserves the right, by action of the City Manager, to summarily dismiss all or any portion of a proposal protest that raises legal or factual arguments or allegations that have been considered and adjudicated by the City of Durham in a previous proposal protest in the same solicitation.

#### 2.15.9 Decision on Protest

After review of a proposal protest submitted under this Section, the City Manager shall make a recommendation to the Durham City Council of the appropriate disposition of such protest. The recommendation shall be made on the basis of the information provided by the protestor and other parties, the results of any conferences with the protestor, and the City of Durham's own investigation and analysis. The recommendation shall be in writing and decision of the Durham City Council shall be the final and binding agency action. Except in exceptional circumstances, the decision of the Durham City Council will be rendered within 30 days after the date all relevant information is submitted pursuant to subsection 2.15.4 and 2.15.6 or the date of the conference under subsection 2.15.6, whichever last occurs.

If the protest is upheld, the City of Durham will take appropriate action to correct the procurement process and protect the rights of the protestor, including resolicitation of proposals, revised evaluation of proposals or City of Durham determinations, or termination of the contract. If the protest is denied, the City of Durham will lift any suspension imposed and proceed with the appropriate stage of the procurement process or the Contract, as the case may be.

#### 2.15.10 Appeals

A protestor adversely affected by the decision of the Durham City Council may submit a protest to the Federal Transit Administration (FTA) for review in accordance with FTA Circular 4220.1D, paragraph 7. As stated in that Circular, FTA will only review protests regarding the alleged failure of the grantee to have written protest procedures, alleged failure to follow such procedures, or alleged failure to review a complaint or protest.

Under the following conditions, the City of Durham may proceed with the procurement in spite of a pending protest at the FTA: (a) the service or item to be procured is urgently required; (b) delivery or performance will be unduly delayed by failure to make the award promptly; or (c) failure to make prompt award will otherwise cause undue harm to the City of Durham or the Federal Government.

A protestor adversely affected by a decision of the Durham City Council may also appeal such decision to the General Court of Justice, Superior Court Division for Durham County.

### 3.0 PROPOSAL CONTENT AND EVALUATION

Proposers must provide a written proposal that includes each of the required submittals set forth in this section. A proposal that does not include each of the required submittals may be rejected by the City of Durham.

#### 3.1 Cover Letter

Each proposal shall include and begin with a cover letter identifying the entity submitting the proposal and the name of an individual who is authorized to act on behalf of the entity for purposes of this procurement. The cover letter must also acknowledge receipt of any issuance of City of Durham responses and/or addenda.

#### 3.2 Table of Contents

A Table of Contents must be included next, and the remaining required submittals should follow and be presented in the order set forth below.

**NOTE: In sections 3.3, 3.6, and 3.8 below, there is reference to computer software. All proposers are advised that the City of Durham simply desires to know the specific software recommended by each proposer for use by the subsidiary corporation, and the approximate cost of this software. The successful proposer will not be required to provide any of software recommended, nor should any of the proposers therefore include the cost of this software in the management fee proposed.**

#### 3.3 Capability, Management Approach and Experience

A statement explaining and documenting the proposer's ability and approach to performing the scope of services set forth in this RFP. This statement should include any strategies or concepts the proposer has for enhancing service quality, reducing costs, or otherwise improving the productivity or performance of fixed route transit services. This statement should also include a list of all entities, public and private, for which the proposer has managed fixed route transit services during the past five years on the basis of a management fee, including an identification of the services rendered, and the current status of the proposer's involvement in those services. This list shall include the name, address, telephone number, and email address of the chief executive officer of each entity. Members of the City of Durham evaluation committee may contact any person listed for use as a reference. Lastly, this statement must identify accounting software recommended for use by the subsidiary corporation denoting the approximate cost of this software. The software recommended must be compatible with the Federal Transit Administration's Uniform System of Accounts.

### 3.4 Organizational Structure and Personnel Plan

A statement explaining the organizational structure of the subsidiary corporation recommended by the proposer, including an organizational chart that denotes full time employee equivalents for all positions within the organization. The recommended organizational structure must be based upon the position listing contained in Exhibit 2 as it may be modified by the proposer, in which case an explanation for each modification must also be included. The statement must also include a recommended job description for each position including the minimum qualification requirements that would be used to fully staff the organization.

### 3.5 Safety Program

A statement explaining the safety program of the subsidiary corporation recommended by the proposer. The recommended safety program should address the safety of employees and passengers. It should also address operational safety with and without passengers aboard, traffic safety, accident reduction and mitigation, crime prevention, safety for mechanics and service personnel and all employees, including those involved in technical and/or hazardous activities. The recommended safety program proposed must comply with all applicable Federal regulations of the Occupational Health and Safety Administration and all applicable Federal, state, or local safety or environmental laws, regulations, rules, codes, or orders.

### 3.6 Maintenance Program

A statement explaining the maintenance program of the subsidiary corporation recommended by the proposer. The recommended maintenance program should address the scope and frequency of different maintenance activities with emphasis on the preventative maintenance activities recommended by the proposer to insure reliability and availability of all vehicles and equipment throughout their useful lives. In addition, the maintenance program shall detail the proposer's recommendation for defect reporting and response procedure, and the proposer's recommendation for responding to in-service failures from the moment an operator requests assistance. Lastly, proposer should provide its recommendation for maintenance software denoting an approximate cost for this software.

### 3.7 Field Service Monitoring Program

A statement explaining the field service-monitoring program of the subsidiary corporation recommended by the proposer. This program should address, but not necessarily limited to: pullouts; early, late and missed trips, lost vehicle operators, in-service failures, unusual traffic conditions, detours, and other events that impact routine service delivery. The recommended field service-monitoring program should also include a description of any field service standards or standard operating procedures recommended, and a reporting system and format designed to monitor performance in relation to these standards and standard operating procedures.

### 3.8 Customer Comment Program

A statement explaining the customer comment program of the subsidiary corporation recommended by the proposer. This program should address how commendations, community service calls and complaints are received, investigated, addressed, and reported. Lastly, proposer should provide its recommendation for any software that can be used to automate the customer comment program denoting the approximate cost of this software.

### 3.9 Fee Submittal

A statement of the proposed start up and management fees. Proposers must use the start up and management fee form contained in Exhibit 3.

**NOTE: This form is not to be included within the text of the original proposal or any of the seven (7) copies, but instead sealed in an envelope and placed separately within the proposal package, as instructed in section 2.5 of this RFP.**

### 3.10 Start Up Plan

A description of the proposer's plan for assuming responsibility for DATA fixed route service, including an identification of the specific issues that need to be addressed in the start-up, and the proposer's plan for addressing those issues.

### 3.11 EEO/Affirmative Action Plan

A copy of the proposer's Equal Employment Opportunity Program, including an Affirmative Action Plan (in compliance with Federal law) that includes persons with disabilities and disabled veterans.

### 3.12 Disadvantaged Business Enterprise (DBE) Information

A statement indicating that proposer will comply with the DBE goals or demonstrate good faith efforts to comply with the DBE goals established by the City of Durham. If the prime contractor qualifies as a certified DBE or is joint venturing with a certified DBE, a copy of the DBE certification(s), and a description of the dollar value of the proposed work that it intends to perform with its own forces, together with a statement of the percentage interest in the Contract held by the joint venture DBE.

### 3.13 Debarred Bidders' List Information

A certification addressing the debarment and suspension status of the Contractor or any of its principals. Proposers must use the certification form contained in Exhibit 4.



### 3.14 Lobbying

A certification regarding lobbying. Proposers must use the certification form contained in Exhibit 5.

### 3.15 Evaluation of Proposals

All proposals received will be evaluated by an Evaluation Committee in accordance with the criteria stated in section 3.16 below. The City shall have the right to determine the fairness and reasonableness of the proposal, and to contact any and all client references. The City will then conduct interviews and discussions with proposers in the competitive range.

Following the interview and discussion process, proposers in the competitive range will be asked to submit a best and final offer (BAFO), which will include a final start up and management fee proposal. After the submittal of the BAFOs, the Evaluation Committee will evaluate the BAFOs and submit that evaluation to the City Manager and a recommendation will be made to the Durham City Council regarding contract award.

Notwithstanding the foregoing stated within this section, the City of Durham reserves the right to make the award under this RFP based upon the initial proposals submitted, without establishment of a competitive range and without interviews and discussions and submissions of BAFOs.

### 3.16 Evaluation Criteria

The following items comprise the evaluation criteria (in order of relative importance) pursuant to which the written proposals will be evaluated.

#### 3.16.1 Management Experience, Capability, and Approach

This factor will include a review and evaluation of the information submitted in response to sections 3.3 and 3.4 of this RFP.

#### 3.16.2 Quality of Program/Plan Submittals.

This factor will include review and evaluation of the information submitted in accordance with sections 3.5, 3.6, 3.7, and 3.8.

#### 3.16.3 Cost

This factor will include a review and evaluation of the start up and management fees proposed.

#### 3.16.4 Start Up Plan

This factor will include a review and evaluation of the start up plan proposed.

#### 3.16.5 Compliance

Compliance with items 3.11 through 3.14.

## **4.0 SCOPE OF SERVICES**

### **4.1 Establishment and Maintenance of Subsidiary Corporation**

The successful proposer, subject to the laws of the State of North Carolina, shall cause to be formed and shall maintain a separate private non-profit public service corporation, named the Durham Area Transit Company, Inc. (DATC), or such other name as is available and approved by the City of Durham. The DATC, by assignment, shall assume the rights and obligations of the successful proposer under the contract between the City of Durham and the successful proposer relating to the management of the DATA fixed route transit service; provided however, that upon any such assignment made by the successful proposer, the successful proposer shall remain guarantor of each and every one of the obligations to the City of Durham provided by the contract between the City of Durham and the successful proposer; and any breach or violation thereof by its assignee shall be deemed a breach or violation by the successful proposer.

In the event the contract between the City of Durham and the successful proposer is terminated or expires, the City of Durham may, at its sole option, purchase all of the stock of the DATC, the purchase price being the exact cost expended by the successful proposer in causing the formation of the DATC and all of such stock shall be forthwith transferred, assigned and conveyed to the City of Durham, its assignee or designee.

### **4.2 Employment of Personnel**

The DATC shall be the employer of all employees necessary for the day to day management and operation of the DATA fixed route transit service; provided however, that the number of personnel employed by DATC shall at all times be subject to the approval of the City of Durham. The compensation paid to all management and/or non-union personnel shall be within the total compensation range for each such position, as recommended by the successful proposer and approved by the City of Durham. The compensation paid to all union personnel shall be as stated in the collective bargaining agreement.

### **4.3 Responsibilities of the Successful Proposer**

The successful proposer shall manage and control all activities necessary for the provision of the DATA fixed route service in compliance with all applicable federal, state and local regulations, excepting only those activities specifically denoted herein as a responsibility of the City of Durham. The responsibilities of the successful proposer include, but are not limited to:

Providing all operators, mechanics and service personnel as well as all other personnel;

Training personnel as necessary;

Fostering improved labor relations and conducting the labor contract negotiations;

Ensuring safety of personnel and patrons, preventing losses and arranging for all appropriate insurance coverages.

Ensuring compliance with applicable environmental and occupational safety and health laws and regulations.

Maintaining all facilities, vehicles, and equipment;

Developing methods for improving the reliability and efficiency of service operations;

Developing operational and maintenance reporting procedures;

Developing an annual operating budget;

Developing financial controls for the protection of all funds and assets;

Developing reporting procedures necessary for the timely and accurate reporting of all required financial statements;

Establishing an asset and inventory control system;

Conducting all operational (non-capital) procurements;

Providing customer service;

Conducting fare media sales;

Administering all necessary third party service contracts;

And any and all other work necessary to render the DATA fixed route service fully functional, again excepting only those activities specifically denoted herein as a responsibility of the City of Durham.

The City of Durham is responsible for: federal, state, and local grant management and reporting; capital procurements; short and long term service planning; and marketing and public affairs. However, the successful proposer will be responsible for working cooperatively with the City of Durham in providing any and all information and/or assistance reasonable and necessary for this work to be performed successfully.

**EXHIBIT 1 REVENUE VEHICLE LISTING**

Quantity	Year	Type
7	1992	Orion 35' High Floor with Wheel Chair Lift
8	2000	Gillig 30' High Floor with Wheel Chair Lift
3	2001	Gillig 30' High Floor with Wheel Chair Lift
30	2003	Gillig 40' Low Floor with Ramp
1	2005	Gillig 40' Low Floor with Ramp

## EXHIBIT 2 EMPLOYEMENT POSITION LISTING

FTE	Position
1	General Manager
1	Assistant General Manager
1	Customer Service Supervisor
3	Customer Service Representative (FT)
2.5	Customer Service Representative (PT)
1	Safety Manager
1	Assistant Safety Manager
1	Operations Manager
1	Assistant Operations Manager
8	Operations Supervisor
104	Operator
1	Maintenance Manager
1	Assistant Maintenance Manager
1	Maintenance Supervisor
1	Parts Clerk
14	Mechanic
4	Vehicle Attendant
3	Facility Attendant
1	Finance Manager
1	Assistant Finance Manager
1	Payroll Clerk

### EXHIBIT 3 MANAGEMENT FEE SUBMITTAL FORM

Start Up Fee and Management Fees:

The undersigned hereby certifies that he/she is duly authorized on behalf of \_\_\_\_\_ to submit a proposal to the City of Durham for the management of the DATA fixed route service as described in the Request for Proposals (RFP) issued by the City of Durham on November 27, 2006, and that the entity named herein hereby agrees to provide the services requested within this RFP for the Start Up Fee and the Annual Management Fees stated below.

Start Up Fee \$ \_\_\_\_\_

Year 1 Annual Management Fee \$ \_\_\_\_\_

Year 2 Annual Management Fee \$ \_\_\_\_\_

Year 3 Annual Management Fee \$ \_\_\_\_\_

Year 4 Annual Management Fee \$ \_\_\_\_\_

Year 5 Annual Management Fee \$ \_\_\_\_\_

**NOTE: Annual Management Fees stated above must result in an even dollar amount when divided by 12.**

Signed this \_\_\_\_\_ day of January, 2007 by \_\_\_\_\_,  
name

the \_\_\_\_\_ of \_\_\_\_\_.  
title name of entity

Signature: \_\_\_\_\_

ATTEST by Corporate Secretary: \_\_\_\_\_

**EXHIBIT 4: DEBARMENT CERTIFICATION**

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION,  
INELIGIBILITY and VOLUNTARY EXCLUSION  
LOWER TIER COVERED TRANSACTION**

The prospective lower tier participant (Proposer/Contractor) certifies, by submission of this proposal, that neither it nor its "principals" [as defined at 49 C.F.R. §29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

\_\_\_ If the prospective lower tier participant (Proposer/Contractor) is unable to certify to the statements in this certification, such prospective participant (Proposer/Contractor) shall attach an explanation to this proposal. (Check if applicable)

The lower tier participant (Proposer/Contractor), \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of this statement of its certification and disclosure, if any.

SIGNATURE \_\_\_\_\_

TITLE \_\_\_\_\_

COMPANY \_\_\_\_\_

DATE \_\_\_\_\_

State of \_\_\_\_\_

County of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Notary Public \_\_\_\_\_

My Appointment Expires \_\_\_\_\_



## EXHIBIT 5: LOBBYING CERTIFICATION

### CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any persons for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding to any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*.)]
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.  
This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transactions imposed by 31, U.S.C. 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**[Note: Pursuant to 31 U.S.C. 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 for each such expenditure or failure.]**

The Contractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands

and agrees that the provisions of 31 U.S.C. Section A 3801 *et seq.*, apply to this certification and disclosure, if any.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Contractor's Authorized Official

\_\_\_\_\_  
Name and Title of Contractors Authorized  
Official

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, in the State of \_\_\_\_\_;  
and the County of \_\_\_\_\_.

Notary Public \_\_\_\_\_

My Appointment Expires \_\_\_\_\_

**EXHIBIT 6: PROPOSED CONTRACT**

**CITY OF DURHAM**

**And**

**BLANK**

**CONTRACT FOR MANAGEMENT  
OF THE DURHAM AREA TRANSIT AUTHORITY  
FIXED ROUTE TRANSIT SERVICE**

**(Effective July 1, 2007)**

This Contract is made and entered into this 19th day of March 2007 by and between the City of Durham, North Carolina (hereinafter referred to as the “City”), and BLANK (hereinafter referred to as the “Contractor”).

## **SEC. 1            PURPOSE**

The purpose of this Contract is for the Contractor to manage the entire operations of the Durham Area Transit Authority (hereinafter referred to as DATA) fixed route transit service in the service areas of the City and Durham County.

## **SEC. 2            DEFINITIONS**

As used in this Contract:

**Americans with Disabilities Act of 1990 (ADA).** The term “Americans with Disabilities Act” or “ADA” means the statute enacted by the United States Congress as Public Law Number 101-336.

**City Liaison.** The term “City Liaison” means the individual designated by the City Manager of the City to administer the City’s responsibilities under this Contract. Unless otherwise indicated in writing by the City Manager, the Transit Administrator shall be the City Liaison.

**City Manager.** The term “City Manager” means the City Manager of the City or the person designated by the City Manager in writing to carry out his or her duties under this Contract.

**Days.** The term “days” means business days recognized by the City, unless otherwise specifically noted.

**Durham Area Transit Authority (DATA).** The term “Durham Area Transit Authority” or “DATA” means the entity created by the City to establish transit operating policies and to establish the routes and schedules of the Fixed Route Service.

**Durham Area Transit Authority (DATA) Board of Trustees.** The term “Durham Area Transit Authority Board of Trustees” or “DATA Board of Trustees” means the DATA policy making board composed of seven regular members and two alternate members appointed by the Durham City Council.

**Durham City Council.** The term “Durham City Council” means the elected members of the City Council of the City who appoint the DATA Board of Trustees and who retain final authority over the financial matters of the Fixed Route Service

**Facilities.** The term “Facilities” means the DATA administrative and operating facilities located at 1820 North Miami Boulevard, 1903 Fay Street, 1907 Fay Street, Durham, and the downtown transfer facility located 521 Morgan Street in Downtown Durham.

**Federal Transit Administration (FTA).** The term “Federal Transit Administration” or “FTA” means the Federal Transit Administration of the United States Department of Transportation or its successor entity.

**Fixed Route Service.** The term “Fixed Route Service” means all of the fixed route services provided in the name of DATA.

**General Manager.** The term “General Manager” means the General Manager identified by the Contractor, and approved by the City, responsible for carrying out the Contractor’s duties under this Contract.

**Assistant General Manager.** The term “Assistant General Manager” means the Assistant General Manager identified by the Contractor, and approved by the City, responsible for carrying out the Contractor’s duties under this Contract.

**Maintenance Manager.** The term “Maintenance Manager” means the Maintenance Manager identified by the Contractor, and approved by the City, responsible for carrying out the Contractor’s maintenance related duties under this Contract.

**Operations Manager.** The term “Operations Manager” means the Operations Manager identified by the Contractor, and approved by the City, responsible for carrying out the Contractor’s operation related duties under this Contract.

**Operating Expenses.** The term “operating expenses” shall mean all reasonable operating expenses such as but not limited to salaries, benefits, services, materials and supplies, utilities, insurance and other non-capital expenses needed for use in providing the Fixed Route Service.

**Proposal.** The term “Proposal” refers to a written document submitted by the Contractor in response to the Request for Proposals (RFP) issued by the City.

**Public Hearing.** The term “Public Hearing” means an open forum in which the opinions and concerns of the public community are solicited.

### **SEC. 3            CONTRACT DOCUMENTATION**

The Contractor acknowledges that the Request for Proposals issued by the City, the Clarifications and Responses to Questions issued by the City, and the Proposal submitted by the Contractor are hereby incorporated into and made a part of this Contract by reference as if they were attached hereto. In the event any provision of this Contract is in conflict with any provision of the documents stated herein, this Contract shall govern.

#### **SEC. 4           SUBSIDIARY CORPORATION**

The Contractor, subject to the laws of the State of North Carolina, shall cause to be formed and shall maintain a separate private nonprofit public service corporation, named the Durham Area Transit Company, Inc. (DATC), or such other name as is available and approved by the City of Durham. The DATC, by assignment, shall assume the rights and obligations of the Contractor under this Contract; provided however, that upon any such assignment made by the Contractor, the Contractor shall remain guarantor of each and every one of the obligations to the City of Durham provided by this Contract; and any breach or violation thereof by its assignee shall be deemed a breach or violation by the Contractor.

In the event this Contract is terminated or expires, the City of Durham may, at its sole option, purchase all of the stock of the DATC, the purchase price being the exact cost expended by the Contractor in causing the formation of the DATC and all of such stock shall be forthwith transferred, assigned and conveyed to the City of Durham, its assignee or designee.

#### **SEC. 5           EMPLOYMENT OF PERSONNEL**

The DATC shall be the employer of all employees necessary for the day to day management and operation of the DATA fixed route transit service; provided however, that the number of personnel employed by DATC shall at all times be subject to the approval of the City of Durham. The compensation paid to all management and/or non-union personnel shall be within the total compensation range for each such position, as recommended by the successful proposer and approved by the City of Durham. The compensation paid to all union personnel shall be as stated in the collective bargaining agreement.

#### **SEC. 6           SCOPE OF WORK**

The Contractor shall manage and control all activities necessary for the provision of the DATA fixed route service in compliance with all applicable federal, state and local regulations, excepting only those activities specifically denoted herein as a responsibility of the City of Durham. The responsibilities of the Contractor include, but are not limited to:

Providing all operators, mechanics and service personnel as well as all other personnel;

Training personnel as necessary;

Fostering improved labor relations and conducting the labor contract negotiations;

Ensuring safety of personnel and patrons, preventing losses and arranging for all

appropriate insurance coverages;

Ensuring compliance with applicable environmental and occupational safety and health laws and regulations;

Maintaining all facilities, vehicles, and equipment;

Developing methods for improving the reliability and efficiency of service operations;

Developing operational and maintenance reporting procedures;

Performance of all finance, accounting, and payroll functions;

Developing an annual operating budget;

Developing financial controls for the protection of all funds and assets;

Developing reporting procedures necessary for the timely and accurate reporting of all required financial statements;

Establishing an asset and inventory control system;

Conducting all operational (non-capital) procurements;

Providing customer service;

Conducting fare media sales;

Attending public meetings of the DATA Board of Trustees and other meetings requested by the City;

Arranging for and administering all necessary third party service contracts; and

Any and all other work necessary to render the DATA fixed route service fully functional, again excepting only those activities specifically denoted herein as a responsibility of the City of Durham.

The City of Durham is responsible for: federal, state, and local grant management and reporting; capital procurements; short and long term service planning; and marketing and public affairs. However, the Contractor shall be responsible for working cooperatively with the City of Durham in providing any and all information and/or assistance reasonable and necessary for this work to be performed successfully.

## **SEC. 7            PERFORMANCE REQUIREMENT**

The Contractor shall, at all times during the term of this Contract, perform all work diligently, carefully, and in a professional manner; and shall furnish all labor, supervision, and management necessary therefore. The Contractor shall conduct all work in the Contractor's own name and as an independent Contractor and not in the name of, or as an agent for, the City.

## **SEC. 8            WORKING FUNDS**

The City shall provide the Contractor with sufficient working funds to pay all payroll and other operating expenses under policies, procedures, and controls established and/or approved by the City. The power to increase or decrease the amount of such working funds is reserved to the City. Upon termination or expiration of this Contract, all unexpended balances remaining in such accounts shall revert and be returned to the City

## **SEC. 9            TITLE OF PROPERTY**

All real estate, buildings and improvements, equipment, buses, motor vehicles and any and all other materials and supplies reasonably necessary for the operation of the transit services shall be furnished by the City and shall remain the property of the City. The Contractor shall keep a perpetual inventory of all property and equipment belonging to the City and being managed by the Contractor.

## **SEC.10           PERFORMANCE BOND**

Before this Contract shall be valid or binding against the City, but within 30 days after the award of this Contract, the Contractor shall obtain a performance bond for the use of the City, which bond shall be signed by the Contractor and two or more good and sufficient sureties, or with a surety company as Surety, and shall be in the amount of \$1,000,000.00. The performance bond shall be kept in full force and effect at all times during the term of this Contract. The performance bond may be a one year renewable bond.

The condition of the performance bond shall be that the Contractor shall fully and faithfully perform all conditions of this Contract.

If the City determines that the Contractor has substantially failed to keep and perform the covenants, conditions, and agreements in this Contract, then the City may require the Surety to perform, or may exercise or collect or cause to be exercised or collected, the obligations under the performance bond. In such an event, the City Liaison shall notify the Surety and give the Surety an opportunity to perform within a reasonable time certain. If the Surety fails to perform, the City Liaison shall perform and assess the Surety on its bond for the cost of such performance.



## **SEC. 11        DISCLAIMER OF LIABILITY**

The City will not hold harmless or indemnify the Contractor for any liability whatsoever, except as permitted by law and so noted in this contract.

## **SEC. 12        HOLD HARMLESS**

The Contractor agrees to protect, defend, indemnify and hold the City, its officers, employees and agents, free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings or causes of action of every kind and character (hereinafter collectively "claims") in connection with or arising directly or indirectly out of this Contract or the performance hereof by the Contractor or any subcontractor, except to the extent that such claims, liens, demands, obligations, actions, proceedings or causes of action are the result of the negligence of the City, its officers, employees or agents. Without limiting the generality of the foregoing, any and all such claims, relating to personal injury, infringement of any patent, trademark, copyright (or application for any thereof) or of any other tangible or intangible personal or property right, or actual or alleged violation of any other tangible or intangible personal or property right, or actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation, or decree of any court, shall be included in the indemnity hereunder. The Contractor further agrees to investigate, handle, respond to, provide defense for, and defend any such claims, whether or not it is alleged or determined that the Contractor was negligent, and without regard to whether such claim is groundless, false, or fraudulent.

## **SEC. 13        DISPUTES**

Any dispute between the Contractor and the City relating to the implementation, interpretation, or administration of this Contract shall be resolved in accordance with this Section.

The parties shall first attempt to resolve the dispute informally in meetings or communications between the Contractor and the City Liaison. If the dispute remains unresolved 15 days after it first arises, the Contractor may request the City Manager to issue a recommended decision on the matter in dispute. The City Manager shall issue the recommended decision in writing and provide a copy to the Contractor.

The recommended decision of the City Manager shall become final unless, within 15 days of receipt of such recommended decision, the Contractor submits a written request for review to the Durham City Council. In connection with any such review, the Contractor and the City Manager shall be afforded an opportunity to be heard and to offer evidence on the issues presented. If the dispute remains unresolved after review by the

Durham City Council, either party may seek judicial resolution of the dispute in the General Court of Justice, Superior Court Division for Durham County.

Pending final resolution of a dispute under this Section, the Contractor shall proceed diligently with performance in accordance with this Contract and the City Manager's recommended decision.

#### **SEC. 14 CANCELLATION OF CONTRACT**

In any of the following cases, the City shall have the right to cancel this Contract without expense to the City: (1) the Contractor is guilty of misrepresentation; (2) this Contract was obtained by fraud, collusion, conspiracy, or other unlawful means; or (3) this Contract conflicts with any statutory or constitutional provision of the State of North Carolina or the United States. This Section shall not be construed to limit the City's right to terminate this Contract for convenience or default, as provided in Sections 15 and 17, respectively.

#### **SEC. 15 TERMINATION FOR CONVENIENCE**

The performance of work under this Contract may be terminated by the City in accordance with this Section in whole, or from time to time, in part, whenever the City determines, upon recommendation of the City Manager, that such termination is in the best interest of the City. Any such termination shall be effected by delivery to the Contractor of a notice of termination specifying the extent to which performance of work under this Contract is terminated and the date upon which such termination becomes effective.

Upon receipt of a notice of termination, and except as otherwise directed by the City Manager, the Contractor shall: (1) stop work under this Contract on the date and to the extent specified in the notice of termination; (2) place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the work under this Contract as is not terminated; (3) terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the notice of termination; (4) assign to the City in the manner, at the times, and to the extent directed by the City Manager, all of the right, title and interest of the Contractor under the orders and subcontracts so terminated; (5) settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the City, to the extent the City Manager may require, which approval or ratification shall be final for all the purposes of this Section; (6) deliver to the City in the manner, at the times, and to the extent, if any, directed by the City Manager, supplies, equipment, and other material produced as a part of, or acquired in connection with the performance of, the work terminated, and any information and other property which, if this Contract had been completed, would have been required to be furnished to the City; (7) complete any such part of the work as shall not have been terminated by the notice of termination; and (8) take such action as may be necessary, or as the City Manager may direct, for the protection and preservation of the property related to this Contract which is

in the possession of the Contractor and in which the City has or may acquire an interest. Payments by the City to the Contractor shall be made by the date of termination but not thereafter. Except as otherwise provided, settlement of claims by the Contractor under this Section shall be in accordance with the provisions set forth in 48 C.F.R. Part 49, as amended from time to time.

## **SEC. 16        TERMINATION BY MUTUAL AGREEMENT**

This Contract may be terminated by mutual agreement of the parties. Such termination shall be effective in accordance with a written agreement by the parties. Any other act of termination shall be in accordance with the termination by convenience or default provisions contained in Sections 15 and 17.

## **SEC. 17        TERMINATION FOR DEFAULT**

- 17.1 Subject to the provisions of Subsection 17.3 of this Section, the City may, by 10-day advance written notice of default to the Contractor, terminate the whole or any part of this Contract in any one of the following circumstances:

If the Contractor fails to provide the services in the manner required by this Contract or in accordance with the performance standards articulated herein;

If the Contractor fails to perform any of the provisions of this Contract in accordance with its terms; or

If the Contractor fails to make progress in the prosecution of the work under this Contract so as to endanger such performance.

- 17.2 In the event that the City terminates this Contract in whole or in part as provided in Subsection 17.1 of this Section, the City may procure, upon such terms and in such manner as the City Manager may deem appropriate, supplies or services similar to those so terminated. The Contractor shall be liable to the City for costs associated with the termination of this Contract, the procurement of replacement services by the City, and any excess costs of such similar supplies or services. The Contractor shall continue the performance of this Contract to the extent not terminated under the provisions of this Section. Any disputes arising under this Section that cannot be resolved by the Contractor and the City are subject to resolution pursuant to Section 13.

- 17.3 Prior to terminating this Contract for default, the City shall provide a written notice to Contractor of default and shall provide Contractor a minimum of ten (10) days to cure said default prior to termination for default, except in the case where Contractor fails to maintain the proper insurance coverage as specified in Section 45 herein, in which case City may terminate this Contract without such notice.

- 17.4 Except as otherwise provided, settlement of claims by the Contractor under this Section shall be in accordance to the provisions set forth in 48 C.F.R. Part 49, as amended from time to time.

## **SEC. 18 FORCE MAJEURE**

The Contractor shall not be liable for any failure to perform if convincing evidence has been submitted to the City Manager that failure to perform this Contract was due to causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include acts of God, civil disturbances, fire, war, or floods, war or terrorism. Strikes or labor disputes may be included at the sole discretion of the City.

## **SEC. 19 INTERESTS OF MEMBERS OF, OR DELEGATES TO, CONGRESS**

In accordance with 18 U.S.C. Section 431, no member of, or delegate to, the Congress of the United States shall be admitted to any share or part of this Contract or to any benefit arising therefrom.

## **SEC. 20 DEBARRED BIDDERS**

The Contractor shall provide the City with a certification addressing its debarment and suspension status and that of its principals. The Contractor shall promptly inform the City of any change in the suspension or debarment status of the Contractor or its principals during the term of this Contract.

## **SEC. 21 SUBCONTRACTING OF CONTRACT AND TRANSFER OF INTERESTS**

This Contract or any portion thereof shall not be subcontracted except with the prior review and written approval of the City. In any case in which the Contractor desires to subcontract, it shall provide the City with all proposed subcontracting agreements and documents (including scope of work and terms of compensation). If permitted to subcontract, the Contractor shall be fully responsible for all work performed by the subcontractors.

The Contractor may not, by subcontract, modify its obligation to perform in full accordance with this Contract, or otherwise modify the basis upon which the Contractor was selected and Contract award made. Any action of the Contractor in violation of the preceding sentence shall constitute a breach of this Contract and an act of default. Further, the entering into of a subcontract shall not, under any circumstances, relieve the Contractor of its liability and obligations under this Contract, and all transactions with the City must be through the Contractor.

Any approval of a subcontract shall not be construed as making the City a party of such subcontract, giving the subcontractor privity of contract with the City, or subjecting the City to liability of any kind to any subcontractor.

The Contractor shall incorporate in each subcontract the provisions of this Contract in full, with the same conditions being imposed upon subsequent subcontractors.

There shall be no assignment or transfer of interests or delegation of the Contractor's rights, duties, or responsibilities of the Contractor under this Contract, except at the direction or with the advance written consent of the City.

## **SEC. 22        LICENSING, PERMITS, AND TAXES**

The Contractor shall be appropriately licensed for the work required as a result of this Contract. The cost for any required licenses and permits, excepting the cost of permits that are to be included in Operating Expenses, shall be the responsibility of the Contractor. The Contractor is liable for any and all taxes due as a result of this Contract, provided, however, the taxes due upon licensing and registering revenue and support vehicles or taxes due on any other Operating Expenses shall be paid by the City.

## **SEC. 23        LACK OF FUNDS CLAUSE**

The entering into of this Contract by the City is subject to its receipt of local, state and Federal funds adequate to carry out the provisions of this Contract in full.

The City Manager may cancel or reduce the amount of service to be rendered if the City Manager determines that such action is in the City's best interests, or that there will be a lack of funding available for the service. In such event, the City Manager will notify the Contractor in writing thirty (30) days in advance of the date such cancellation or reduction is to be effective.

## **SEC. 24        INDEPENDENT CONTRACTOR**

Under the terms of this Contract, the Contractor is an independent Contractor and has and retains full control and supervision of the services performed by and full control over the employment and direct compensation and discharge of all persons, other than City employees, assisting in the performance of its services. The Contractor agrees to be solely responsible for all matters relating to wages, hours of work, and working conditions and payment of employees, including compliance with social security, all payroll taxes and withholdings, unemployment compensation, and all other requirements relating to such matters. The Contractor agrees to be responsible for its own acts and those of its subordinates, employees, and any and all subcontractors during the term of this Contract.

## **SEC. 25        WAIVER OF TERMS AND CONDITIONS**

The failure of the City Manager or the Contractor to enforce one or more of the terms or conditions of this Contract or to exercise any of its rights or privileges, or the waiver by the City of any breach of such terms or conditions, shall not be construed as thereafter waiving any such terms, conditions, rights, or privileges, and the same shall continue and remain in force and effect as if no waiver had occurred.

## **SEC. 26        INTERPRETATION, JURISDICTION, AND VENUE**

All contractual agreements shall be subject to, governed by, and construed and interpreted solely according to the laws of the State of North Carolina. The Contractor hereby consents and submits to the jurisdiction of the appropriate courts of North Carolina or of the United States having jurisdiction in North Carolina for adjudication of any suit or cause of action arising under or in connection with the Contract documents, or the performance of this Contract, and agrees that any such suit or cause of action may be brought in any such court.

## **SEC. 27        INSPECTION OF WORK**

All work (which term in this Section includes services performed, material furnished or utilized in the performance of services, and workmanship in the performance of services) shall be subject to inspection and test by the City Liaison to the extent practicable at all times and places during the term of this Contract. All inspections by the City Liaison shall be made in such a manner as to not unduly delay the work. The City Liaison shall have the right to enter the premises used by the Contractor for the purpose of inspecting and auditing all data and records that pertain to the Contractor's performance under this Contract. The City Liaison shall also have the right to enter the premises used by the Contractor for the purpose of inspecting vehicles that are used to provide services under this Contract.

If any work performed is not in conformity with the requirements of this Contract, the City Liaison shall have the right to require the Contractor to perform the work again in conformity with such requirements. In the event the Contractor fails promptly to perform the work again and take necessary steps to ensure future performance of the work is in conformity with the requirements of this Contract, the City shall have the right to terminate this Contract for default as provided in Section 17.

## **SEC. 28        ANTIDISCRIMINATION CLAUSE**

The Contractor shall not in any way, directly or indirectly, in the performance of this Contract, discriminate against any person because of age, race, color, disability, sex, national origin, or religious creed.

## **SEC. 29        EQUAL EMPLOYMENT OPPORTUNITY**

The Contractor shall comply with the equal opportunity provisions of the Civil Rights Act of 1964, as amended, Executive Orders Numbers 11375 and 11246 as amended as supplemented in the Department of Labor Regulations 41 C.F.R. Part 60 and of the rules, regulations, and relevant orders of the Secretary of Labor. In connection with the performance of this Contract, the Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, age, disability, sex or national origin. The Contractor shall take affirmative action to ensure that applicants are employed and treated during their employment without regard to their race, religion, color, age, disability, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. The Contractor further agrees to insert a similar provision in all subcontracts.

## **SEC. 30        AMERICANS WITH DISABILITIES ACT**

The Contractor shall comply with all provisions of the Americans with Disabilities Act of 1990 (P.L. No. 101-336) and Section 504 of the Rehabilitation Act of 1973 (P.L. No. 93-112). The City shall ensure its policies with respect to the operation of the transit system meet the requirements of the Americans with Disabilities Act of 1990.

## **SEC. 31        ENERGY EFFICIENCY**

The Contractor shall recognize the mandatory standards and policies relating to energy efficiency that are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. § 6321 et seq.).

## **SEC. 32        CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

The Contractor shall comply with the provisions under this Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-330) as supplemented by Department of Labor regulations (29 C.F.R. Part 5).

## **SEC. 33        BUY AMERICA**

The Contractor shall comply with the applicable Buy America requirements set forth in 49 U.S.C. § 5323(j) and the applicable regulations in 49 C.F.R. Part 661, as amended. If the Contractor procures any capital items with Federal funds, it is the Contractor's responsibility to obtain the Buy America certification required under such regulations.

## **SEC. 34        ENVIRONMENTAL REQUIREMENTS**

The Contractor agrees to comply with any Federal environmental and resource conservation requirements that are in effect during the term of this Contract. The

Contractor shall report any violation of standards, orders or regulations issued under the Clean Air Act (42 U.S.C. § 7401 et seq.) or the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.) resulting from any activity of the Contractor in connection with the performance of this Contract to FTA and to the appropriate U.S. EPA Regional Office. The Contractor shall be responsible for the disposal of hazardous materials, including, but not limited to, waste oil, grease, automatic transmission fluid, diesel fuel and detergents, in accordance with applicable Federal, State and local law and regulations.

## **SEC. 35 COMPLIANCE WITH LAWS AND PERMITS**

The Contractor shall give all notices and comply with all existing and future Federal, state, and local laws, ordinances, rules, regulations, and orders of any public authority bearing on the performance of this Contract, including, but not limited to, the laws referred to in these provisions of this Contract and in the other contract documents. If this Contract documents are at variance therewith in any respect, any necessary changes shall be incorporated by appropriate modification. Upon request, the Contractor shall furnish to the City Liaison certificates of compliance with all such laws, orders, and regulations.

## **SEC. 36 DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

It is the policy of the City that DBEs as defined in 49 C.F.R. Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this Contract. Consequently, the DBE requirements of 49 C.F.R. Part 26 apply to this Contract.

The Contractor agrees to ensure that DBEs as defined in 49 C.F.R. Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this Contract. In this regard, the Contractor shall take all necessary and reasonable steps in accordance with 49 C.F.R. Part 26 to ensure that DBEs have the maximum opportunity to compete for and perform contracts.

The Contractor shall not discriminate on the basis of race, color, national origin, physical or mental disability, or sex in the award and performance of contracts assisted by the U.S. Department of Transportation.

The established goals for this Contract shall be in accordance with the City/Durham Area Transit Authority's approved Disadvantaged Business Enterprise Program.

## **SEC. 37 SECTION 13(c) OBLIGATIONS**

The Contractor shall be administratively responsible for obligations under Section 13(c) of the Federal Transit Act (49 U.S.C. § 5333(b)).



The Contractor shall have financial liability for any 13(c) claims or obligations that are created by acts or omissions of the Contractor that are not directed by the City, and shall also be obligated to comply with any applicable preference in hiring obligations imposed under Section 13(c). In addition, the Contractor shall cooperate with the City (including the provision of payroll records and other information) in the resolution or defense of any 13(c) claims or disputes for which the City has responsibility.

The Contractor shall not assist or encourage any employee to file or otherwise pursue a 13(c) claim against the City, or take any action which is contrary to the interests of the City under 13(c) or its 13(c) arrangements or agreements, relating to the termination of services under this Contract, any future transition from the Contractor to another service provider, or any other action or event relating to this Contract. If the Contractor fails to comply with this obligation, the Contractor shall be financially liable for all costs incurred by the City (including attorneys' fees) associated with any 13(c) claims or delays in the receipt of Federal grants.

The Contractor agrees to offer all of the employees of the current Contractor who are engaged in the provision of fixed route services to the City (except executive and administrative officers) comparable positions to the positions currently held by those employees. The Contractor also agrees to assume and/or fulfill the current Contractor's obligations with respect to wages, hours, working conditions, health and welfare, and pension or retirement provisions for those fixed route employees for whom the Contractor is required to provide comparable positions. Unless otherwise specified herein, the Contractor shall not be required to assume any liabilities with respect to employees hired from the previous contractor where such liabilities were created prior to employment of these employees by Contractor, including liabilities for accrued benefits.

## **SEC. 38        FTA TITLE VI SERVICE STANDARDS**

The Contractor agrees to meet City's service standards developed in compliance with FTA Circular 4702.1 implementing Title VI of the Civil Rights Act of 1964. Title VI service standards include a minimum of five elements: (1) Vehicle Load; (2) Vehicle Assignment; (3) Vehicle Headway; (4) Distribution of Transit Amenities; and (5) Transit Access.

## **SEC. 39        PATENT RIGHTS**

If any invention, improvement, or discovery of the Contractor is conceived or first actually reduced to practice in the course of or under this Contract, and that invention, improvement, or discovery may be patentable under the patent laws of the United States of America or any foreign country, the Contractor shall immediately notify the City Liaison and provide a detailed report. The rights and responsibilities of the City, the Contractor and the Federal Government with respect to each such invention, improvement, or discovery will be determined in accordance with applicable Federal laws, regulations, policies and any waiver thereof.

#### **SEC. 40 SEVERABILITY**

In the event any provision of this Contract is declared or determined to be unlawful, invalid, or unconstitutional, such declaration shall not affect, in any manner, the legality of the remaining provisions of this Contract and each provision of this Contract will be and is deemed to be separate and severable from each other provision.

#### **SEC. 41 CONTRACT TERM**

The term of this Contract is for a period of three (3) years beginning July 1, 2007, with multiple one (1) year options as described immediately below.

The City shall have the option of extending this Contract for multiple one (1) year periods commencing respectively the day after the initial three (3) year term or any one (1) year extension. The City will provide the Contractor with notice of whether it intends to exercise an option at least 90 days before the end of the initial (3) year term or any one (1) year extension.

#### **SEC. 42 INVOICES AND PAYMENTS**

The Contractor shall be compensated by the City for the services performed under this Contract solely on the basis of a management fee as follows:

Year 1	Annual Management Fee of \$	Monthly Management Fee of \$
Year 2	Annual Management Fee of \$	Monthly Management Fee of \$
Year 3	Annual Management Fee of \$	Monthly Management Fee of \$
Year 4	Annual Management Fee of \$	Monthly Management Fee of \$
Year 5	Annual Management Fee of \$	Monthly Management Fee of \$

On or before the 15<sup>th</sup> day of each month, the Contractor is to send the Transit Liaison an invoice for the monthly management fee then in effect. Upon receipt, the City shall have up to 10 days to approve of the invoice and forward to the Contractor's subsidiary corporation for actual payment. The foregoing notwithstanding, the City shall have no obligation to approve or cause any invoice to be paid to the Contractor until such time as all required monthly financial and operating reports are submitted to the City and found to be materially correct.

#### **SEC. 43 FARE COLLECTION**

The Contractor is responsible for collecting fares in strict accordance with instructions provided by the City. The Contractor's vehicle operators and/or the fareboxes are to record each boarding by type of fare, including recording of non-fare boardings on days designated by the City.

All fares collected are the property of the City. Any cash fares and tickets are to be emptied from the farebox by the Contractor. The amount of the collected fares and transfers shall substantially correspond to the number of passenger trips recorded by the Contractor and/or the fareboxes.

The City will periodically conduct on-board farebox checks. The Contractor shall cooperate with the City in any such on-board checks.

#### **SEC. 44 PROJECT MANAGEMENT**

The Contractor will designate a full-time General Manager, Assistant General Manager, Maintenance Manager, and an Operations Manager dedicated to services performed under this Contract who will manage and supervise the day-to-day operations of the Fixed Route Service in accordance with Section 6 of this Contract. All of these persons or their designees are to be available by telephone or in person during all hours of operation to make decisions as necessary at the request of the City.

The City reserves the right to approve the selection of the General Manager, the Assistant General Manager, the Maintenance Manager, and the Operations Manager, and to direct the removal of one or more of these persons at any time during the term of this Contract. The City Liaison must be notified at least 30 days prior to any contemplated changes to the General Manager, the Assistant General Manager, the Maintenance Manager, and/or the Operations Manager, and the City Liaison must provide written approval of changes to the General Manager, the Assistant General Manager, the Maintenance Manager, and/or the Operations Manager prior to the action being taken.

The City reserves the right to require the Contractor to immediately remove an employee from transportation service for any of, but not necessarily limited to, the following items:

- Committing unsafe or inappropriate acts while providing transportation services;

- Revocation or non-renewal of a valid North Carolina driver's license;

- Distributing any unauthorized materials while performing services under this Contract;

- Soliciting a gratuity from a passenger;

- Failure to notify the Contractor of an arrest or conviction of a criminal offense of a Class A or Class B misdemeanor or felony; or placement on probation or deferred adjudication for the same; or a driving while intoxicated (DWI) charge, before the end of the business day following the day the employee receives notice of such action;

- Incurring excessive customer complaints due to discourtesy, rudeness, and use of profanity or any other act deemed unacceptable; or

- Failing or refusing to take a drug or alcohol test.

## **SEC. 45        INSURANCE**

The cost of insurance and whatever liability for personal injury or property damage or loss may be incurred to third parties in connection with or arising out of the Contractor's performance under this Contract, except as otherwise provided in this Contract, shall be part of Operating Expenses and thus be reimbursed or paid by City. The Contractor shall, however, be liable for any negligent, dishonest, fraudulent, misconduct, or intentional tort committed or directed by any officer or employee of the Contractor, or any other such act or omission, on the part of any person or persons directly or indirectly employed and paid by Operator, but only if such acts resulted from negligent oversight, management, supervision, or training by the Contractor.

The Contractor will be responsible for obtaining the insurance denoted below and for maintaining this insurance if full force and effect during the term of this Contract:

Workers' Compensation Insurance covering all of Contractor's employees engaged in work under this Contract as required under the Workers' Compensation Act of the State of North Carolina and/or any applicable law or laws of any other state or states. Employer's Liability Insurance with limits of liability of not less than \$1,000,000 per accident, \$1,000,000 per employee for disease, and \$1,000,000 policy total for disease.

General Liability Insurance covering the Facilities premises used in performance of this Contract with limits of liability of not less than \$5,000,000 each occurrence combined single limit, with an aggregate limit not less than and \$10,000,000. Such liability insurance shall also include coverage for all operations of the Contractor in the performance of this contract, Personal Injury Liability, Contractual Liability, XCU Hazards (explosion, collapse, and underground), Broad Form Property Damage, and Liability for Independent Contractors. In addition, Fire Damage Liability Limit shall not be limited except by the coverage limit of the policy or the amount of damage to City's buildings, whichever is less.

Automobile Liability Insurance covering all Revenue and Support Vehicles used in connection with the work performed under this Contract with limits of not less than \$10,000,000 each occurrence combined single limit for bodily injury and property damage.

Automobile Physical Damage Insurance on all City-owned Revenue Vehicles covering collision and fire, theft, combined additional coverage with limits of liability not less than the actual cash value of the vehicle at time of loss or the cost to repair or replace with like kind and quality with deduction for depreciation. Deductibles shall not exceed \$10,000 for each loss and the City shall be named Loss Payee under the policy.

The City will be named as an additional insured for all commercial coverage for all City-owned or leased assets and for all liability coverage.

All such policies as required above shall be endorsed to provide a thirty (30) day written Notice of Cancellation, renewal, or material change to the City Liaison.

The limits of liability as required under this Section may be provided by a single policy of insurance or a combination of policies including excess insurance. Self-insurance or the use of deductibles or self-insured retentions may be permitted in lieu of these requirements if so approved in writing by the City Manager.

The Contractor shall require any and all subcontractors performing work under this Contract to carry insurance to the types and with limits of liability as the Contractor shall deem appropriate and adequate. The Contractor shall obtain and make available for inspection by the City Liaison upon request Certificates of Insurance evidencing insurance coverages carried by such subcontractors.

All insurance required to be maintained or provided by the Contractor and subcontractors shall be with companies and through policies approved by the City Liaison. The City Liaison has the right to inspect in person, prior to commencement of the work, all of the Contractor's insurance policies in regard to required insurance coverages. All such Insurance Companies shall carry a Best's rating of A+ (or equivalent) and be authorized to do business in the State of North Carolina.

Proof of the required insurance coverage shall be furnished to the City Liaison within thirty (30) calendar days prior to the effective date of this Contract. Renewal or replacement policies shall be furnished fifteen (15) days prior to the expiration date or termination date of any policy furnished in compliance with the requirements of this Contract. Proof of insurance shall consist of duplicate original insurance policies and a certificate issued by the agent summarizing the insurance and indicating the 90-day notice requirement.

If at any time during this Contract term the Contractor fails to provide proof of insurance required above, the City reserves the right, but not the obligation, to purchase other insurance to protect the City's interests and to find the Contractor in default of this Contract.

#### **SEC. 46      AUDIT AND INSPECTION OF RECORDS**

The Contractor agrees that the City, the Comptroller General of the United States, and the U.S. Secretary of Transportation, or any of their duly authorized representatives, shall, for the purpose of audit and examination, be permitted to inspect all work, materials, payrolls, and other data and records, and to audit the books, records, and accounts relating to the performance of this Contract. Further, the Contractor agrees to

maintain all required records for at least three (3) years after the City has made final payment and all other pending matters are closed.

The City Manager may, at any time, conduct an audit of any and/or all records kept by the Contractor that are directly or indirectly related to the services provided under this Contract. Appropriate financial adjustments shall be made by the City Manager based upon any inconsistency, irregularity, discrepancy or unsubstantiated billing revealed as a result of such audit. Any overpayment uncovered in such an audit may be charged against the Contractor's future invoices.

#### **SEC. 47 OWNERSHIP OF DOCUMENTS**

The Contractor agrees that any and all information, in oral or written form, whether obtained from the City, its agents or assigns, or other sources, or generated by the Contractor pursuant to this Contract, shall not be used for any purpose other than fulfilling the requirements of this Contract. Any documents, reports, or data generated by the Contractor in connection with the performance of this Contract shall become the sole property of the City, subject to any rights asserted by the FTA. The Contractor may retain copies of such items for its files. The Contractor shall not release any documents, reports, or data from this project without prior written consent of the City.

#### **SEC. 69 CONTINUITY OF SERVICES**

The Contractor recognizes that the services under this Contract are vital to the City and must be continued without interruption and that, upon Contract expiration or termination, another entity, either the City or another provider, may continue those services. The Contractor agrees to: (1) furnish phase-in training; and (2) exercise its best efforts and cooperate to effect an orderly and efficient transition to the subsequent provider.

The Contractor shall, upon the City Manager's written notice: (1) furnish phase-in, phase-out services for up to 90 days after this Contract expires or terminates; and (2) negotiate in good faith a plan with the subsequent provider to determine the nature and extent of phase-in, phase-out service required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the City Manager's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this Contract are maintained at the required level of proficiency.

The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs that are incurred and not compensated by the City in the Service Hour method of compensation within the agreed period after contract expiration or termination that directly result from phase-in, phase-out operations.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed by their duly authorized officers.

CITY

Company Name

By: \_\_\_\_\_  
City Manager

By: \_\_\_\_\_  
President/CEO

ATTEST:

ATTEST:

By: \_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
Corporate Secretary